

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.200 of 2004

The Asst. Director of Income Tax (Exemption) I,
Madras. ...Appellant

Vs

M/s.Murugappa Chettiar Trust,
12, Boat Club Road, Adyar,
Madras-600 028. ...Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'C', Chennai in I.T.A. No.513(Mds)/94 dated 15.02.2001 for the assessment year 1990-91. against the order of the Commissioner of Income Tax (Appeals) III Madras 34 in IT Appeal NO. 21/93-94 ABDE)/I dated 4/11/93 against the order of the Office of the Director of Income tax (Exemptions) 121, Mahatma Gandhi Salai, Chennai 34 in DIT (E) 12(2)/93-94 dated 20.11.1995

For Appellant : Mr.T.Ravi Kumar,
Standing Counsel for
Income-tax Department

For Respondent : Mr.M.P.Senthilkumar

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'C', Chennai in I.T.A. No.513(Mds)/94 dated 15.02.2001. On 16.06.2004, this Court admitted the appeal and formulated the following substantial question of law:-

"Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that Rs.4,86,304/- which was not

invested in another capital asset could be eligible for exemption under Section 11(1A) of the Income Tax Act?"

2. The facts leading to the above substantial question of law are as under:

The assessee is a Trust. The relevant assessment year is 1990-91 and the corresponding accounting year ended on 31.03.1990. The assessment was completed under Section 143(1)(a) of the Income-tax Act ("Act" in short) raising a demand of Rs.4,60,433/-. The assessee-Trust sold certain lands for Rs.9,65,625/- and out of the sale proceeds, invested an amount of Rs.4,58,321/- in fixed deposits and Rs.21,000/- in building under construction. Later, the assessee filed a petition under Section 154 of the Act stating that the assessment could not be made under Section 143(1)(a), because the prima facie adjustments made by the Assessing Officer were beyond his scope. However, the application was dismissed. Aggrieved by the same, the assessee filed an appeal before the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeal and set aside the order of the Assessing Officer. Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the appeal and confirmed the order of the C.I.T.(A). Hence the present appeal by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that only a sum of Rs.4,58,321/- was invested during the year of account in another capital asset, namely, fixed deposit and the balance amount was lying in Current Account in the Bank of India and also by way of cheque on hand and the amounts lying in current account and cheque on hand could not be classified as investment in another capital asset. Therefore, the Assessing Officer is right in holding that the amount lying in the current account as well as the cheque on hand, could not be taken as a classified investment.

4. Learned counsel appearing for the assessee submitted that the assessee had invested the balance amount in the current account and hence the assessee has satisfied the requirement as contemplated under the provisions of the Act. Hence the order passed by the Tribunal is in accordance with law.

5. Heard the counsel. It was found by the Assessing Officer that a sum of Rs.4,58,321/- was alone invested during the year of account in another capital asset, viz., Fixed Deposit. The dispute here is whether the balance amount of Rs.4,86,304/- lying in the Current Account in the Bank of India as well as the cheque on hand, would be considered as classified investment or not, under the provisions of the Act. Section 11(5)(iii) of the Act, reads as under:-

"(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely:-

(i) ...

(ii) ...

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank)."

In the present case, the deposit was made in the current account with the Bank of India and hence the same will come within the meaning of the words "deposit in any account with a scheduled bank". "Any account" includes current account also. It is not disputed by the learned Standing Counsel appearing for the Revenue. The amount involved in the present case is Rs.4,86,304/-. For this amount, there is no particulars available regarding the amount deposited in the current account and also the details regarding the cheque on hand. In respect of deposit in the current account, both the authorities have correctly taken the view that it is a classified investment, as contemplated under the provisions of the Act. It is seen from Paragraph-2 of C.I.T.(A)'s order that out of Rs.4,86,304/-, a sum of Rs.3,31,36.75 was invested in the current account with Bank of India and hence, the said amount is a proper investment and the same is covered by Section 11(5)(iii) of the Act. The details regarding the cheque amount is not available on record. Hence, we remand the matter to the Tribunal with a direction to find out the details regarding the cheque amount and the deposition of the same, so that the Tribunal can determine whether the assessee has satisfied all the conditions as per the provisions of the Act or not, and pass appropriate orders in accordance with law.

6. We make it clear that as far as the amount invested in the current account is concerned, the same has to be considered as "classified and proper investment" and the remand is only to find out the details regarding the cheque amount and also to find out whether the cheque was deposited or not, for the purpose of giving benefit under the provisions of the Act and pass appropriate orders in accordance with law.

7. With the above observations, the tax case is disposed of. No costs.
km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
Income-tax Appellate Tribunal, Bench 'C',
Rajaji Bhavan, Besant Nagar, Chennai.
 2. The Commissioner of Income-tax (Appeals)-III,
Madras-34.
 3. The Director of Income-tax (Exemptions),
121, Mahatma Gandhi Salai, Madras-600 034.
 4. The Assistant Director of income Tax (Exemptions) I
Madras
- + one cc to Mr. N. Muralikumaran Sr.Standing Counsel IT advocate
sr no. 35722

mj (co)
nm(09.07.07)

T.C.(A) No.200 of 2004

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